

Office of the City Attorney

July 29, 2019

Via CMRRR: 7012 3460 0003 2790 0321

Samuel Sinyangwe
MUCKROCK NEWS
DEPT MR 77192
411A Highland Ave.
Somerville, MA 02144-2516

Re: Public Information Decision Request (Our File No. 2508)

Dear Mr. Sinyangwe:

The City of Lubbock ("City") has received your request for information related to the City's Police Department data. As some of this information may be confidential, the City has written to the Texas Attorney General, a copy of which letter is enclosed. If you wish to submit an opinion as to this matter, you may write to the Attorney General at the following address:

Honorable Ken Paxton
Attorney General
Open Records Division
P. O. Box 12548
Austin, Texas 78711-2548

Thank you.

Sincerely,

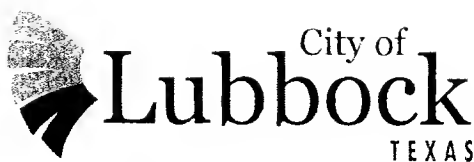
A handwritten signature in black ink, appearing to read "Amy L. Sims", written over a horizontal line.

Amy L. Sims
Deputy City Attorney

ALS:dm

cc:

Office of the Attorney General
Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548



Office of the City Attorney

July 29, 2019

Via CMRRR: 7012 3460 0003 2790 0314

Honorable Ken Paxton
Attorney General
Open Records Division
P. O. Box 12548
Austin, Texas 78711-2548

Re: Public Information Decision Request (Our File No. 2508)

Dear Mr. Paxton:

The City of Lubbock ("City") is requesting an Open Records Decision from your office as it received a request on July 12, 2019, and subsequent clarification on July 15, 2019, for certain information pertaining to the City's Police Department data. A copy of the request and clarification are enclosed herein as **Exhibit A**. Please note that some of the cases within the search resulted in convictions (*see* **Exhibit B—Representative Sample**).

Among the requested items was a copy of the City's Police Department manual. The City has previously obtained decisions from your office regarding its police manual. The City will release the police manual in accordance with those decisions. *See* OR2016-12673, OR2018-23767 and OR2018-23861. In addition, the Requestor asked for certain numbers of incidents involving the City's Police Department. To the extent the City has information regarding the number of incidents, the City will work with the Requestor on releasing the numerical data it possesses. The Requestor has also asked for a copy of a union contract, which does not exist.

The City is requesting a decision from your office pursuant to Chapter 552 of the Texas Government Act, also known as the Public Information Act ("Act") as the remaining requested information may be confidential. In accordance with Section 552.301(e)(1)(D), a portion of the requested information is enclosed herewith as: **Representative Samples—Exhibits B and C**.

The City is raising the following exceptions in its request:

Section 552.101 (exception for information considered to be confidential by law);

Section 552.108 (certain law enforcement and prosecutorial information);

Section 552.130 (exception for motor vehicle records: driver's license and license plate numbers, registration and vehicle identification numbers); and

Section 552.147 (exception for social security numbers).

Section 552.101 — Common Law Privacy

Pursuant to Section 552.101 of the Act, some of the information may be confidential because it implicates common law privacy rights. Common law privacy issues are raised if the information: (1) contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person, and (2) be of no legitimate concern to the public. *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) at 685. Therefore, portions of the information requested may be confidential if these privacy rights are at issue (*see Exhibit B—Representative Samples*).

Section 552.101 (exception for information regarding juveniles and common law privacy)

The City also believes that portions of the requested information may be confidential pursuant to the terms of Section 552.101 of the Act. Pursuant to section 58.007(c) of the Texas Family Code, "law enforcement records and files concerning a child ... may not be disclosed to the public." In this case, the information contains police report(s) of incident(s) involving juveniles (*see Exhibit B—Representative Samples*). The report and evidence reveal the juveniles' identifying information. Therefore, the provisions of section 58.007 may apply.

Section 552.101 (exception for information considered to be confidential by law; dates of birth, addresses, telephones)

Portions of the requested information contain the dates of birth of individuals within the information (*see Exhibit B—Representative Samples*). This information may also be protected by common law privacy and the City is concerned that the release of this information would be an invasion of the individuals' privacy and subject them to possible identity theft. In addition, the information contains the identities, addresses and telephone numbers of individuals. This information, along with the dates of birth, would make it very easy for an identity thief to steal the identities of these people. Due to threat of identity theft, this information should be excepted from disclosure.

The Texas Supreme Court has held that the dates of birth for state employees should be excepted from disclosure. *See Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). The Court of Appeals in *Paxton v. City of Dallas*, 2015 WL 339401 (Tex. App.—Austin, May 22, 2015, *pet. denied*), ruled that this protection of dates of birth should be extended to apply equally to public citizens. Therefore, any dates of birth should remain confidential by law.

Section 552.101

HIPAA

Furthermore, portions of the requested information includes references to the medical conditions of individuals. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. Release of this information may be governed by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), 42 U.S.C. §§ 1320d-1320d-8. Section 42 U.S.C.A. § 1320d-6 of HIPAA provides that it is an offense to disclose “individually identifiable health information to another person.” In this case, release of the information at issue may be a violation of HIPAA.

Texas Medical Records Privacy Act

Additionally, the City may be prohibited from disclosure pursuant to Chapter 181 of the Health and Safety Code. The City may have to comply with the standards relating to the use and disclosure of protected health information and the applicable consent requirements. *See* Health & Safety Code Chapter 181, Medical Records Privacy. This law governs the protection and release of protected health information. Pursuant to Section 181.001(b)(2), the City, as a governmental unit, is specifically included in the definition of a covered entity who is subject to the provisions of this law.

Section 181.001(a) of the Health and Safety code defers to HIPAA for certain definitions. Two such definitions are “protected health information” and “health information.” “Protected health information” is defined by HIPAA in 45 CFR 160.103 as:

[I]ndividually identifiable health information:

(1) Except as provided in paragraph (2) of this definition, that is:

- (i) Transmitted by electronic media;
- (ii) Maintained in electronic media; or
- (iii) Transmitted or maintained in any other form or medium.

(2) Protected health information excludes individually identifiable health information in:

- (i) Education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g;
- (ii) Records described at 20 U.S.C. 1232g(a)(4)(B)(iv); and
- (iii) Employment records held by a covered entity in its role as employer.

“Health information” is likewise defined in HIPAA in 45 CFR 160.103 as:

[A]ny information, whether oral or recorded in any form or medium, that:

-
- (1) Is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and
 - (2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.

Because the requested information is held by the City, as a covered entity, and such information may be protected health information, it may not be subject to disclosure pursuant to the Public Information Act. Section 181.006 of the Health and Safety Code states:

Notwithstanding Sections 181.004 and 181.051, for a covered entity that is a governmental unit, an individual's protected health information:

- (1) includes any information that reflects that an individual received health care from the covered entity; and
- (2) is not public information and is not subject to disclosure under Chapter 552, Government Code.

Therefore, to the extent the requested information and the City are subject to the provisions of Chapter 181 of the Health and Safety Code, it may be protected by law. In addition, Section 724.018 of the Transportation Code is not applicable in this matter as the Requestor has no specific right of access.

Section 552.108 (certain law enforcement and prosecutorial information)

The City asserts that a portion of the requested information is confidential pursuant to the terms of Section 552.108 of the Act (*see Exhibit B—Representative Samples*). This section excepts from disclosure “information held by a law enforcement agency...that deals with the detection, investigation, or prosecution of crime” if the “release ...would interfere with the detection, investigation, or prosecution of crime.” *See* Section 552.108(a)(1) of the Act.

In this case, a portion of the requested information contains evidence in pending police investigation(s) and release of this information could hurt the investigation(s) of the case(s) (*see Exhibit B—Representative Samples*). The requested information should remain confidential while the case(s) are still under police investigation and being reviewed for potential criminal prosecution. *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975).

The City further asserts that another portion of the requested information is confidential pursuant to the terms of Section 552.108 of the Act. A copy of the information that may be confidential pursuant to Section 552.108(a)(2) is enclosed herein as **Exhibit B—Representative Samples**. Section 552.108(a)(2) of the Act excepts from disclosure information concerning an

investigation that concluded in a result other than conviction or deferred adjudication. Texas Gov't Code § 552.108(a)(2). Some of the information contained in **Exhibit B—Representative Samples** concerns concluded investigation(s) that did not result in a conviction or deferred adjudication. Therefore, the information should remain confidential. *See also* OR2000-1930, OR2000-1872, OR99-2747, and OR99-2398.

Section 552.101 and 552.108

Furthermore, the requested information contained within **Exhibit C—Representative Samples** is confidential pursuant to the provisions of Section 552.101 and Section 552.108 of the Act. This information is confidential because it relates to the “g file” of a police officer. The g file is the internal personnel file of a police officer that is maintained in accordance with Section 143.089(g) of the Texas Local Government Code. This provision states that the City “may not release any information contained in the department file to any agency or person requesting information relating to a ... police officer.” The information in the g file is a category of information that is not available for public inspection. *City of San Antonio v. Texas Att’y General*, 851 S.W.2d 946 (Tex. App.—Austin 1993). *See also* Open Records Decision No. 650 (1996).

In *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946 (Tex. App.—Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by the city police department for its use and addressed the applicability of section 143.089(g) to that file. The records included in the personnel file related to investigations of police officers for which no disciplinary action was taken. The court determined that section 143.089(g) made these records confidential. *City of San Antonio*, 851 S.W.2d at 949; *see also City of San Antonio v. San Antonio Express-News*, No. 04-99-00848-CV, 2000 WL 1918877 (Tex. App.—San Antonio, Dec. 20, 2000, no pet. h.) (information reasonably relating to officer's employment relationship with department and maintained in the department's internal file pursuant to section 143.089(g) is confidential).

The portion of requested information within **Exhibit C—Representative Samples** is g file information as it contains all items for the police department's use, is reasonably related to the officer(s)' employment relationship with the department, and should only be maintained in the department's internal file (the g file is labeled as such within **Exhibit C—Representative Samples**). No disciplinary action has been taken with regard to any of the requested information. *See* Tex. Att’y General Opinion No. JC-0257 (2000).

Section 552.130 (exception for motor vehicle records; driver's license and license plate numbers, registration and vehicle identification numbers)

The City is also raising the exception for motor vehicle records. The Act excepts driver's licenses, license plate, registration and vehicle identification numbers issued by an agency of this state or another state or country from disclosure. The requested information includes driver's

Honorable Ken Paxton
Attorney General
July 29, 2019
Page 6

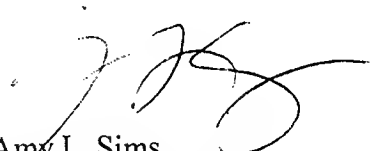
license, license plate and vehicle identification numbers. As such, this information should remain confidential (*see Exhibit B—Representative Samples*). These numbers are also protected by Section 552.130 of the Act because they are "...motor vehicle title or registration issued by an agency of this state or another state or country." *See* Section 552.130(a)(2) of the Act.

Section 552.147 (exception for social security numbers)

Finally, pursuant to Section 552.147(a) of the Act, the social security number of a living individual is excepted from disclosure. Therefore, any and all social security numbers within the requested documents should be redacted in accordance with Section 552.147(b) of the Act (*see Exhibit B—Representative Samples*).

Thank you very much for your consideration of these matters. Please do not hesitate to call or write if you need further information with regard to this request for a decision.

Sincerely,



Amy L. Sims
Deputy City Attorney

ALS:dm

Enclosures: Exhibit A, Exhibits B—Representative Samples and C—Representative Samples

cc: (w/o Exhibit Encl.)

Via CMRRR: 7012 3460 0003 2790 0321

Samuel Sinyangwe
MUCKROCK NEWS
DEPT MR 77192
411A Highland Ave.
Somerville, MA 02144-2516

EXHIBIT A

Dannie Mason

From: Stacy Austin
Sent: Monday, July 15, 2019 8:01 AM
To: Katherine Wilkinson
Subject: FW: Texas Public Information Act Request: Texas police data (Lubbock Police Department)

FYI

From: 77192-36899631@requests.muckrock.com [mailto:77192-36899631@requests.muckrock.com]
Sent: Friday, July 12, 2019 8:16 PM
To: Stacy Austin
Subject: RE: Texas Public Information Act Request: Texas police data (Lubbock Police Department)

Lubbock Police Department
Texas Public Information Act Office
P. O. Box 2000
Lubbock, TX 79457

July 12, 2019

This is a follow up to a previous request:

Hi, to clarify I just want the reports.

Thanks,

Sam

Filed via MuckRock.com
E-mail (Preferred): 77192-36899631@requests.muckrock.com
Upload documents directly:
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with the requester's name rather than "MuckRock News" and the department number) requests might be returned as undeliverable.

On July 12, 2019:

Subject: RE: Texas Public Information Act Request: Texas police data (Lubbock Police Department)
Good Afternoon,

Can you please Clarify on #7 and #8 the term "All Records" would include reports, videos, audios, etc. Or are you only wanting just the reports ?

[cid:image003.png@01D1CD66.76570DF0]

Stacy Austin

Lubbock Police Department

Records System Operator

Phone : 806-775-2808

Fax: 806-775-2861

StacyAustin@mylubbock.us

Lubbock Police Department

Texas Public Information Act Office

P. O. Box 2000

Lubbock, TX 79457

July 12, 2019

To Whom It May Concern:

Pursuant to the Texas Public Information Act, I hereby request the following records:

1. The total number of police use of force incidents, broken down by type of force used, between 2013-2018 (separated by year).
2. The total number of people that police used force against, between 2013-2018 (separated by year).
3. A copy of all complaints reported by civilians against police between 2013-2018.
4. A copy of any documents indicating whether the civilian complaints identified in request #3 were sustained.
5. The policy manual of the police department.
6. The current union contract between the city and any police unions or police associations.
7. All records regarding police shootings (including fatal police shootings, non-fatal police shootings and police shootings at a civilian that missed) between 2013-2018, including incident-level information specifying the date of each incident, race and gender of all subjects involved, what weapon if any they were armed with, any injuries or deaths resulting from the incident, the names of all officers involved, whether administrative investigations found the incidents to be justified under police department policy and any disciplinary actions taken against the officers as a result of the incident.
8. All records regarding civilian deaths or serious injuries resulting from police use of force between 2013-2018, including incident-level information specifying the date of each incident, race and gender of all subjects involved, what weapon if any they were armed with, any injuries or deaths resulting from the incident and the names of all officers involved.

The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 10 business days, as the statute requires.

Sincerely,

Samuel Sinyangwe

Filed via MuckRock.com

E-mail (Preferred): 77192-36899631@requests.muckrock.com

Upload documents directly:

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Sincerely,

Samuel Sinyangwe

Filed via MuckRock.com

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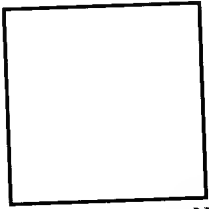
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